ZMW AE 2681

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES
(Attorney Docket No. 1468)

In the Application of:	)	
	)	
Noel Schnake et al.	)	
	)	**Group Art No. 2681**
Serial No.: **09/874,215**	)	
	)	**Conf. No.: 9528**
Filed: **June 5, 2001**	)	
	)	**Examiner Julio R. Perez**
For: METHOD AND SYSTEM FOR MANAGEMENT OF MESSAGES	)	

Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313

TRANSMITTAL LETTER

Sir:

In regard to the above identified application:

1. We are transmitting herewith the attached:

   A. Appeal Brief; and
   B. Return receipt postcard.

2. With respect to additional fees, please charge the amount of $500.00 to Deposit Account No. 210765 to cover the Appeal Brief fee.

3. Please charge any additional fees or credit overpayment to Deposit Account No. 210765. A duplicate copy of this sheet is enclosed.

4. CERTIFICATE OF MAILING UNDER 37 CFR § 1.8: The undersigned also hereby certifies that this Transmittal Letter and the paper, as described in paragraph 1 hereinabove, are being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Mail Stop Appeal Brief-Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313 on this 3rd day of May, 2005.

By: _____
Lawrence H. Aaronson
Reg. No. 35,818

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APPEAL BRIEF

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APPEAL BRIEF

Dear Sir:

This Appeal Brief is submitted pursuant 37 C.F.R. § 41.37, within two months from the Notice of Appeal filed on April 21, 2005. The Office is authorized to charge the large entity Appeal-Brief fee ($500.00) to Deposit Account No. 210765.

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Table of Contents

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I. Real Party in Interest

The real party in interest is Sprint Spectrum LP, to which this invention is assigned.

II. Related Appeals and Interferences

Applicant is not aware of any related appeals or interferences.

III. Status of Claims

Claims 1-29 stand finally rejected. A clean set of these claims is set forth in Appendix A.

IV. Status of Amendments

There are no outstanding amendments.

V. Summary of Claimed Subject Matter

Presently pending are four independent claims: claims 1, 3, 21, and 27.

Claims 1, 3, and 21 are directed to a method of managing message-presentation in a subscriber station. Each of these claims recites sending to a subscriber station or receiving into a subscriber station, via a communication network, (i) a message and (ii) a schedule for presentation of the message, *where the schedule includes a start-time value that indicates when to start presentation of the message*. (*See, e.g.*, specification, at page 6, lines 5-20; page 16, line 7 – page 17, line 8; page 22, lines 5-15). Claim 1 further includes a whereby clause indicating that the subscriber station responsively presents the message according to the time-based schedule, and claims 3 and 21 each further recite that the subscriber station stores the message and schedule and is programmed to present the message according to the schedule. (*See, e.g.*, specification, at page 7, lines 10-22).

In addition, claims 3 and 21 each recite the function of thereafter sending to the subscriber station or receiving into the subscriber station a schedule-change order that defines a change to the schedule for presentation of the message. (*See, e.g.*, specification, at page 23, line

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19 – page 25, line 4). And claim 21 recites that the subscriber station implements the change and thus becomes programmed to present the message according to a modified schedule. (*See, e.g.*, specification, at page 8, lines 1-4).

Claim 27 is directed to a subscriber station that has (i) a stored message and (ii) a stored message-presentation schedule *including a start-time value that indicates when to start presentation of the message*. (*See, e.g.*, specification, at page 7, lines 3-17). The claim further recites that the subscriber station includes a presentation-program logic for presenting the message according to the schedule, and a management-program for *altering the message-presentation schedule in response to receipt of a schedule-change order via a communication interface*. (*See, e.g.*, specification, at page 7, line 18 – page 8, line 11).

VI. Grounds of Rejection to be Reviewed on Appeal

Claims 1-29 stand rejected under 35 U.S.C. § 102 as being allegedly anticipated by U.S. Patent No. 5,848,397 (Marsh).

VII. Argument

For a claim to be anticipated under 35 U.S.C. § 102, a single prior art reference must disclose all features recited in the claim, either directly or under principles of inherency. *Kalman v. Kimberly-Clark Corp.*, 713 F.2d 763 (Fed. Cir. 1983). The reference must also have described the claimed invention sufficiently to have placed it in the possession of a person of ordinary skill in the field of the invention. *In re Paulsen*, 30 F.3d 1475, 1478-79 (Fed. Cir. 1994).

Applicant submits that the Examiner's rejection of claims 1-29 on grounds of anticipation over Marsh is improper, because Marsh fails to disclose all of the features of any of claims 1-29, either expressly or inherently. The following subsections address claims 1-26 and claims 27-29 separately.

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A. Marsh Fails to Anticipate Claims 1-26

As noted above, each of independent claims 1, 3, and 21 is directed to a method of managing message-presentation in a subscriber station. Each of these claims recites sending to a subscriber station (or receiving into a subscriber station) a message and a schedule for presentation of the message, *including a start-time value that indicates when to start presentation of the message*. The act of sending the presentation-schedule to the subscriber station (or receiving the presentation-schedule into the subscriber station) underscores the fact that *message-presentation is a function of the subscriber station* and occurs according to the schedule including the start-time value. Further, each of claims 1, 3, and 21 specifies that the subscriber station is set to present the message according to the schedule.

Marsh teaches (i) downloading ads to client stations and (ii) presenting ads at client stations. But the similarity between Marsh and Applicant's claimed invention ends there.

At a minimum, Marsh does not teach (expressly or inherently) the function of ***sending to a client station (or receiving into a client station)*** a message and ***a schedule that includes a start-time value indicating when to start presentation of the message***. Rather, at best, Marsh teaches that a network server applies a "distribution scheduler" that determines which ads to send to which client stations, and a "download scheduler" that determines when to send ads to client stations. Further, Marsh teaches that a client station applies a "display scheduler" that simply queues ads to be presented and presents them in the order queued. But Marsh does not teach sending to the client station a schedule that includes a start-time value indicating when to start presentation of an ad.

During a telephone interview held on April 11, 2005, the Examiner asserted that Marsh anticipated the claimed invention because Marsh teaches applying a download scheduler to

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determine when to download ads to a client station. The Examiner pointed to numerous lines in Marsh that referenced such a download scheduler. In the final office action mailed February 7, 2005, the Examiner similarly asserted that Marsh's teaching of a download scheduler (at column 16, line 65 – column 17, line 5) constitutes Applicant's claim element of sending to the subscriber station a schedule that "includes a start-time value that indicates when to start presentation of the message" (*See* final office action, at page 2, last two lines).

However, the download scheduler of Marsh (like the rest of Marsh) does not amount to Applicant's claimed invention. Specifically, Marsh's download scheduler merely determines when to send ads to client stations. But neither Marsh's teaching of a download scheduler nor any other aspect of Marsh suggests sending to a client station a schedule that includes a start-time value that indicates when to start presentation of an ad (or other message).

As far as Applicant can tell, it appears that the Examiner may have considered the "download scheduler" of Marsh to somehow mean that a *schedule is downloaded* to a client station. Yet Marsh does not teach that. The download scheduler of Marsh only relates to when to *send* ads to client stations; it does not involve providing the client station with a schedule including a start-time value as presently claimed.

Sending a schedule with a start-time value as presently claimed is particularly advantageous. It allows a network server to specify some future time when an ad (or other message) should begin running at the client station. Marsh does not teach sending a start-time value to a client station, either expressly or inherently, and therefore Marsh fails to achieve this significant benefit.

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Because Marsh fails to teach all of the elements of any of independent claims 1, 3, and 21, Marsh fails to anticipate any of these claims. Further, because each of claims 2, 4-20, and 22-26 depends from one of claims 1, 3 and 21 and incorporates the elements of the claim from which it depends, it follows that Marsh also fails to anticipate claims 2, 4-20, and 22-26.

B. Marsh Fails to Anticipate Claims 27-29

As noted above, claim 27 is directed to a subscriber station that includes (i) a stored message-presentation schedule including a start-time value indicating when to start presentation of a message and (ii) a management-program executable to alter a message-presentation schedule in response to receipt of a schedule-change order. Marsh fails to teach either of these features of a subscriber station.

Regarding the first of these elements, the Examiner asserted that Marsh's disclosure of a download scheduler (at column 16, lines 65 – column 17, line 5) constitutes Applicant's claim element of a stored message-presentation schedule including "a start-time value that indicates when to start presentation of the message." (*See* final office action, at page 9, lines 15-16). However, as explained above, Marsh's download scheduler relates only to when a server should send ads to a client station. Marsh's disclosure of a download scheduler, like the rest of Marsh, fails to teach a client station having a stored message-presentation schedule that includes a start-time value indicating when to start presentation of a message.

Regarding the second of these elements, the Examiner asserted that Marsh's disclosure of a client station having a communications interface and a programmable processor (at column 5, lines 56-67) constitutes Applicant's claim element of "a management-program stored in the data storage medium and executable by the processor, upon receipt of a schedule-change order via the communications interface, to alter the message-presentation schedule." Applicant respectfully

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disagrees. That disclosure does not teach anything about a schedule-change order or alteration of a stored message-presentation schedule. Indeed, a careful reading of Marsh reveals no disclosure of a client station being arranged to receive a schedule-change order and to responsively alter a message-presentation schedule that includes a start-time value indicative of when to start presentation of a message, as recited in claim 27.

Because Marsh fails to teach all of the elements of 27, Marsh does not anticipate claim 27. Further, because claims 28-29 depend from claim 27 and incorporate the limitations of claim 27, it follows that Marsh also fails to anticipate claims 28-29.

Applicant has demonstrated that the rejection of claims 1-29 is in error as a matter of law. Applicant therefore requests reversal of the rejection and allowance of all pending claims in the application.

Respectfully submitted,

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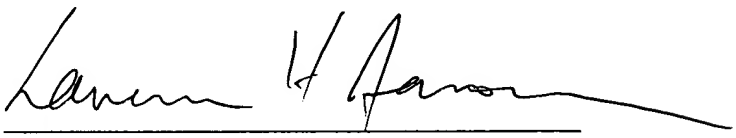
Dated: May 3, 2005

By: 

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APPENDIX A

PENDING CLAIMS

1. (Previously presented) A method of managing message-presentation in a subscriber station, the method comprising:

sending to the subscriber station, via a communications network, a message and a time-based schedule for presentation of the message, whereby the subscriber station responsively presents the message according to the time-based schedule,

wherein the schedule includes a start-time value that indicates when to start presentation of the message.

2. (Original) The method of claim 1, wherein the message comprises an advertisement.

3. (Previously presented) A method of managing message-presentation in a subscriber station, the method comprising:

sending to the subscriber station, via a communications network, a message and a schedule for presentation of the message, whereby the subscriber station stores the message and the schedule and is programmed to present the message according to the schedule; and

thereafter sending to the subscriber station, via the communications network, a schedule-change order defining a change to the schedule for presentation of the message,

wherein the schedule includes a start-time value that indicates when to start presentation of the message.

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4. (Original) The method of claim 3, wherein the message comprises an advertisement.

5. (Original) The method of claim 3, wherein the change to the schedule comprises cancellation of the schedule.

6. (Original) The method of claim 5, further comprising the subscriber station responding to the schedule-change order by deleting the schedule.

7. (Original) The method of claim 3, wherein the schedule-change order includes a substitute-schedule, and wherein the change to the schedule comprises replacement of the schedule with the substitute-schedule.

8. (Original) The method of claim 7, further comprising the subscriber station responding to the schedule-change order by deleting the schedule and storing the substitute-schedule, whereby the subscriber station is then programmed to present the message according to the substitute-schedule.

9. (Original) The method of claim 7, wherein the schedule-change order comprises (i) a cancellation-order defining an instruction to cancel the schedule and (ii) and a schedule-order defining the substitute-schedule.

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10. (Original) The method of claim 9, further comprising:

the subscriber station responding to the cancellation-order by deleting the schedule; and

the subscriber station responding to the schedule-order by storing the substitute-schedule, whereby the subscriber station is then programmed to present the message according to the substitute schedule.

11. (Original) The method of claim 3, wherein the schedule defines a scheduling parameter, and the change to the schedule comprises a change to the scheduling parameter.

12. (Original) The method of claim 11, wherein the scheduling parameter comprises a date/time for presentation of the message.

13. (Original) The method of claim 11, wherein the scheduling parameter comprises a date/time to start presentation of the message.

14. (Original) The method of claim 11, wherein the scheduling parameter comprises a date/time to stop presentation of the message.

15. (Original) The method of claim 11, wherein the scheduling parameter comprises a duration for presentation of the message.

16. (Original) The method of claim 11, wherein the scheduling parameter comprises a number of times to present the message.

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17. (Original) The method of claim 11, wherein the scheduling parameter comprises a frequency of presentation of the message.

18. (Original) The method of claim 3, wherein the communications network comprises an air interface communicatively coupling the subscriber station with a base station.

19. (Original) The method of claim 3, further comprising:

sending to the subscriber station, via the communications network, a reporting request defining a request for data concerning presentation of at least one message; and

receiving from the subscriber station a report defining data concerning presentation of at least one message.

20. (Original) The method of claim 19, wherein the reporting request defines a network address to which the subscriber station should send the report, and wherein receiving the report comprises receiving the report at the network address.

21. (Previously presented) A method for managing message-presentation in a subscriber station, the method comprising:

receiving into the subscriber station, from a communications network, a message and a schedule for presentation of the message;

storing the message and schedule in the subscriber station, wherein the subscriber station becomes programmed to present the message according to the schedule;

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thereafter receiving into the subscriber station, from a communications network, a schedule-change order defining a change to the schedule for presentation of the message; and

the subscriber station implementing the change and thereby becoming programmed to present the message according to a modified schedule,

wherein the schedule includes a start-time value that indicates when to start presentation of the message.

22. (Original) The method of claim 21, wherein the schedule-change order comprises (i) a cancellation-order defining an instruction to cancel the schedule and (ii) and a schedule-order defining the modified schedule.

23. (Original) The method of claim 22, wherein implementing the change comprises:

deleting the schedule; and

storing the modified schedule.

24. (Original) The method of claim 21, further comprising:

maintaining message-presentation statistics in the subscriber station;

receiving into the subscriber station a request for the message-presentation statistics; and

the subscriber station transmitting the message-presentation statistics to a remote entity.

25. (Original) The method of claim 24, wherein the request defines a network address of the remote entity.

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26. (Original) The method of claim 21, wherein the message comprises an advertisement.

27. (Previously presented) A subscriber station comprising:

a processor;

a data storage medium;

a communications interface;

a message stored in the data storage medium;

a message-presentation schedule stored in the data storage medium and defining a schedule for presentation of the message;

a presentation-program stored in the data storage medium and executable by the processor to present the message according to the schedule for presentation of the message; and

a management-program stored in the data storage medium and executable by the processor, upon receipt of a schedule-change order via the communications interface, to alter the message-presentation schedule,

wherein the schedule includes a start-time value that indicates when to start presentation of the message.

28. (Original) The subscriber station of claim 27, further comprising:

message-presentation statistics stored in the data storage medium; and

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a reporting-program stored in the data storage medium and executable by the processor, upon receipt of a reporting-request via the communications interface, to send the message-presentation statistics to a remote network entity via the communications interface.

29. (Original) The subscriber station of claim 27, wherein the schedule-change order comprises (i) a cancel-order defining an instruction to cancel the schedule for presentation of the message and (ii) a schedule-order defining a substitute-schedule for presentation of the message, and wherein:

the management-program is executable by the processor, in response to the cancel-order, to cancel the schedule for presentation of the message; and

the management-program is executable by the processor, in response to the schedule-order, to store the substitute-schedule in the data storage medium.

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